

Application No. 09/436,455  
Amendment Dated August 12, 2004  
Reply to Office Action mailed May 13, 2004

REMARKS

In this amendment claims 1, 47, 83, 86 and 95 are amended and claims 61-63 are cancelled. Accordingly, claims 1-13, 18-60, 64-75, and 79-95 are currently pending.

Applicant believes that no new matter is introduced by the above referenced amendments.

Interview Summary

Applicant's attorney wishes to express gratitude to the Examiner for the telephone interview of June 29<sup>th</sup>, 2004 which was continued on July 2<sup>nd</sup>, 2004 and July 7, 2004. The participants included applicant's representative, Sanjay Bagade and Examiner David Shay.

No exhibit was shown.

At this interview, the parties discussed the 35 U.S.C. §112 rejection relating to extracting a temperature signal from a temperature sensor and relating to the distinction of claims 53 and 95.

The parties discussed all the claims, and in particular claims 1, 29, 83, 86, and 95.

Applicant's representative argued that Farley failed to anticipate the subject claims based upon the structural differences between the device disclosed in Farley and applicant's claimed invention. Applicant also provided basis for withdrawal of the §112.

The parties reached agreement on both of the §112 rejection. No agreement was reached regarding the 35 U.S.C. §102 and §103 rejections.

Allowable Claims

Applicant's attorney wishes to thank the Examiner for the indication that claims 31-34 and 53 would be otherwise allowable if re-written in independent form including all limitations of the base and intervening claims. Applicant notes that claim 53 was already presented in independent form as claim 95 (added in the last response.) Applicant notes that there may be a typographical error in the rejection of claim 95 (as discussed below) and request clarification.

Application No. 09/436,455  
Amendment Dated August 12, 2004  
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Applicant also notes that claim 62 was rejected only under the first 35 U.S.C. §112 rejection. Since this rejection is overcome, applicant believes that the subject matter of this claim is now allowable.

35 U.S.C. §112 - I

The Office Action rejected claims 1-13, 18-75, 79-82, 85-92, and 95 under 35 U.S.C. §112, 1<sup>st</sup> paragraph, as failing to comply with the written description requirement.

Applicant's attorney and the Examiner discussed this rejection in the telephone interviews noted above. Applicant believes that the remaining issue is the wording of the claim as relating to the thermocouple.

Claim 1 and 95 are amended to recite a temperature detecting element attached to one of the plurality of legs wherein the temperature detecting element is in electrical communication with at least a portion of the leg such that said portion of the leg forms part of the temperature detecting element.

Claim 86 is amended to recite a thermocouple having a first and second leads, where the first and second leads are electrically connected to a portion of the leg at separate locations on the leg such that the portion of the forms part of the thermocouple.

In view of the above amendments and the telephone interview, Applicant believes that this rejection is overcome.

35 U.S.C. §112 - II

The Office Action rejected claims 53 and 95 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph asserting that they are substantial duplicates. Applicant disagrees.

In the Office Action of September 24, 2004, the Office Action indicated claim 53 would be allowable if it were amended in independent form and incorporated the base and intervening claims (claim 1 and 47.) As a result, applicant added claim 95 as claim 53 in independent form. In the same response, applicant then amended claim 1 (by replacing the words "terminating at" with "fixedly attached to" in the 16<sup>th</sup> line of the claim.) This amendment was not made to claim 95. Accordingly, claim 95 differs in scope from claim 53. In view of the telephone interview, Applicant believes that this rejection is overcome.

Application No. 09/436,455  
Amendment Dated August 12, 2004  
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35 U.S.C. §102

The Office Action rejected claims 1-13, 18-30, 38-39, 41-50, 54-60, 66-70, 71, 7?, 74, and 81-94 under 35 U.S.C. §102(e) as being anticipated by Farley et al. (U.S. Patent no. 6,152,899).

Applicant disagrees with the rejections set forth in the previous Office Action and reserves the right to pursue the rejected subject matter in a continuing application. In response to the Office Action, applicant submits that Farley fails to anticipate, at the very least, claims 1 and 83.

To expedite prosecution, applicant amended claim 1 herein to include the elements of claims 62 and 63 which previously depended from claim 1. Claims 62 and 63 are cancelled by way of this amendment.

Claim 1, as now amended, a deployment member comprising a wire extending from said distal tip to said proximal portion, configured to move the expandable portion between the first and second state, the wire extending at least between the expandable portion and the proximal portion of the elongated body and where the wire is also configured to provide a current to said energy transfer elements.

Claim 83 is also amended to recite an electrically conductive wire extending through the lumen of the elongated body and terminating at the distal tip, the wire being in electrical communication with the plurality of electrically conductive legs such that it may deliver current to the electrically conductive legs, the wire also being moveable relative to the proximal joint to permit deflection of the plurality of conductive legs.

Farley ('899) simply fails to recite an electrically conductive wire that is also able move the basket between an expanded and reduced state.

In view of the above, applicant submits that Farley fails to anticipate claims 1-13, 18-30, 38-39, 41-50, 54-60, 66-70, 71, 7?, 74, 74, and 81-94 and requests withdrawal of this rejection

Application No. 09/436,455  
Amendment Dated August 12, 2004  
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35 U.S.C. §103

The Office Action rejected claims 1-33, 18-30, 35-43, 54-56, 61, 63-70, 72-75, and 79-95 under 35 U.S.C. §103(a) as being unpatentable over Farley ('899) in combination with Burnside et al. (U.S. Patent No. 6,071,281.) Applicant disagrees.

As noted above, applicant amended claim 1 to include the elements of claim 62 and 63. Furthermore, applicant amended claim 83 to recite an electrically conductive wire extending through the lumen of the elongated body and terminating at the distal tip, the wire being in electrical communication with the plurality of electrically conductive legs such that it may deliver current to the electrically conductive legs, the wire also being moveable relative to the proximal joint to permit deflection of the plurality of conductive legs.

Accordingly, applicant submits that claims 1 and 83 and all claims ultimately dependent therefrom are not rendered unpatentable as provided by the previous Office Action.

SUMMARY

Applicant believes all outstanding issue raised in the previous Office Action are addressed herein and that the claims are in condition for allowance. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (650) 810-1100.

Respectfully submitted,

  
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